

EXPUNGEMENT REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

Committee Note:

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill creates a new chapter known as the Utah Expungement Act.

Highlighted Provisions:

This bill:

- ▶ creates a specific definition of expunge;
- ▶ sets out the steps a petitioner must take to obtain an expungement;
- ▶ specifies what cannot be expunged;
- ▶ allows the Bureau of Criminal Identification to charge application and issuance fees for a certificate of eligibility for expungement;
- ▶ provides for notice of a petition for expungement to be given to the prosecutor, victim, and, in the court's discretion, the Division of Adult Probation and Parole;
- ▶ allows the bureau to deny a petitioner a certificate of eligibility if the petitioner provides false or misleading information on an application;
- ▶ requires the bureau to expedite the eligibility process for a person who is acquitted;
- ▶ provides rulemaking authority to the Department of Public Safety for the expungement process;
- ▶ changes how agencies handle expunged records; and



28 ▶ makes technical corrections.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **41-6a-501**, as last amended by Laws of Utah 2009, Chapters 75, 201, and 214

36 **53-3-414**, as last amended by Laws of Utah 2007, Chapters 53 and 132

37 **53-5-704**, as last amended by Laws of Utah 2008, Chapters 3 and 382

38 **53-6-302**, as enacted by Laws of Utah 1995, Chapter 134

39 **53-10-202.5**, as enacted by Laws of Utah 1999, Chapter 227

40 **53A-6-306**, as enacted by Laws of Utah 1999, Chapter 108

41 **76-8-504.6**, as enacted by Laws of Utah 2004, Chapter 354

42 **77-27-21.5**, as last amended by Laws of Utah 2009, Chapters 117, 126, 249, and 354

43 **77-38-14**, as last amended by Laws of Utah 1996, Chapter 1

44 **78A-2-301**, as last amended by Laws of Utah 2009, Chapters 147 and 149

45 **ENACTS:**

46 **77-40-101**, Utah Code Annotated 1953

47 **77-40-103**, Utah Code Annotated 1953

48 **77-40-104**, Utah Code Annotated 1953

49 **77-40-105**, Utah Code Annotated 1953

50 **77-40-106**, Utah Code Annotated 1953

51 **77-40-107**, Utah Code Annotated 1953

52 **77-40-110**, Utah Code Annotated 1953

53 **77-40-111**, Utah Code Annotated 1953

54 **RENUMBERS AND AMENDS:**

55 **77-40-102**, (Renumbered from 77-18-9, as last amended by Laws of Utah 1999,
56 Chapter 21)

57 **77-40-108**, (Renumbered from 77-18-14, as last amended by Laws of Utah 2009,
58 Chapter 48)

59 **77-40-109**, (Renumbered from 77-18-15, as last amended by Laws of Utah 2008,
60 Chapter 382)

61 **77-40-112**, (Renumbered from 77-18-16, as enacted by Laws of Utah 1994, Chapter
62 143)

63 **77-40-113**, (Renumbered from 77-18-17, as enacted by Laws of Utah 1994, Chapter
64 143)

65 REPEALS:

66 **77-18-10**, as last amended by Laws of Utah 2009, Chapter 48

67 **77-18-11**, as last amended by Laws of Utah 2009, Chapter 183

68 **77-18-12**, as last amended by Laws of Utah 2008, Chapters 303, 306, and 355

69 **77-18-13**, as last amended by Laws of Utah 1996, Chapter 35



71 *Be it enacted by the Legislature of the state of Utah:*

72 Section 1. Section **41-6a-501** is amended to read:

73 **41-6a-501. Definitions.**

74 (1) As used in this part:

75 (a) "Assessment" means an in-depth clinical interview with a licensed mental health
76 therapist:

77 (i) used to determine if a person is in need of:

78 (A) substance abuse treatment that is obtained at a substance abuse program;

79 (B) an educational series; or

80 (C) a combination of Subsections (1)(a)(i)(A) and (B); and

81 (ii) that is approved by the Division of Substance Abuse and Mental Health in
82 accordance with Section 62A-15-105.

83 (b) "Driving under the influence court" means a court that is approved as a driving
84 under the influence court by the Utah Judicial Council according to standards established by
85 the Judicial Council.

86 (c) "Drug" or "drugs" means:

87 (i) a controlled substance as defined in Section 58-37-2;

88 (ii) a drug as defined in Section 58-17b-102; or

89 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the

90 human body, can impair the ability of a person to safely operate a motor vehicle.

91 (d) "Educational series" means an educational series obtained at a substance abuse
92 program that is approved by the Division of Substance Abuse and Mental Health in accordance
93 with Section 62A-15-105.

94 (e) "Negligence" means simple negligence, the failure to exercise that degree of care
95 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

96 (f) "Screening" means a preliminary appraisal of a person:

97 (i) used to determine if the person is in need of:

98 (A) an assessment; or

99 (B) an educational series; and

100 (ii) that is approved by the Division of Substance Abuse and Mental Health in
101 accordance with Section 62A-15-105.

102 (g) "Serious bodily injury" means bodily injury that creates or causes:

103 (i) serious permanent disfigurement;

104 (ii) protracted loss or impairment of the function of any bodily member or organ; or

105 (iii) a substantial risk of death.

106 (h) "Substance abuse treatment" means treatment obtained at a substance abuse
107 program that is approved by the Division of Substance Abuse and Mental Health in accordance
108 with Section 62A-15-105.

109 (i) "Substance abuse treatment program" means a state licensed substance abuse
110 program.

111 (j) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
112 Section 41-6a-102; and

113 (ii) "Vehicle" or "motor vehicle" includes:

114 (A) an off-highway vehicle as defined under Section 41-22-2; and

115 (B) a motorboat as defined in Section 73-18-2.

116 (2) As used in Section 41-6a-503:

117 (a) "Conviction" means any conviction arising from a separate episode of driving for a
118 violation of:

119 (i) driving under the influence under Section 41-6a-502;

120 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a

121 combination of both-related reckless driving under:

122 (I) Section 41-6a-512; and

123 (II) Section 41-6a-528; or

124 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
125 41-6a-502.5;

126 (iii) driving with any measurable controlled substance that is taken illegally in the body
127 under Section 41-6a-517;

128 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
129 of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in
130 compliance with Section 41-6a-510;

131 (v) automobile homicide under Section 76-5-207;

132 (vi) Subsection 58-37-8(2)(g);

133 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
134 conviction is reduced under Section 76-3-402; or

135 (viii) statutes or ordinances previously in effect in this state or in effect in any other
136 state, the United States, or any district, possession, or territory of the United States which
137 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
138 both-related reckless driving if committed in this state, including punishments administered
139 under 10 U.S.C. Sec. 815.

140 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
141 through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
142 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
143 reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

144 (i) enhancement of penalties under:

145 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

146 (B) automobile homicide under Section 76-5-207; and

147 (ii) expungement under [~~Section 77-18-12~~] Title 77, Chapter 40, Utah Expungement
148 Act.

149 Section 2. Section **53-3-414** is amended to read:

150 **53-3-414. CDL disqualification or suspension -- Grounds and duration --**
151 **Procedure.**

152 (1) A person who holds or is required to hold a CDL is disqualified from driving a
153 commercial motor vehicle for a period of not less than one year if convicted of a first offense
154 of:

155 (a) driving a motor vehicle while under the influence of alcohol, drugs, a controlled
156 substance, or more than one of these;

157 (b) driving a commercial motor vehicle while the concentration of alcohol in the
158 person's blood, breath, or urine is .04 grams or more;

159 (c) leaving the scene of an accident involving a motor vehicle the person was driving;

160 (d) failing to provide reasonable assistance or identification when involved in an
161 accident resulting in:

162 (i) death in accordance with Section 41-6a-401.5; or

163 (ii) personal injury in accordance with Section 41-6a-401.3;

164 (e) using a motor vehicle in the commission of a felony;

165 (f) refusal to submit to a test to determine the concentration of alcohol in the person's
166 blood, breath, or urine;

167 (g) driving a commercial motor vehicle while the person's commercial driver license is
168 disqualified, suspended, canceled, withdrawn, barred, denied, or revoked; or

169 (h) operating a commercial motor vehicle in a negligent manner causing the death of
170 another including the offenses of automobile homicide under Section 76-5-207, manslaughter
171 under Section 76-5-205, or negligent homicide under Section 76-5-206.

172 (2) If any of the violations under Subsection (1) occur while the driver is transporting a
173 hazardous material required to be placarded, the driver is disqualified for not less than three
174 years.

175 (3) (a) Except as provided under Subsection (4), a driver of a motor vehicle who holds
176 or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if
177 convicted of or administrative action is taken for two or more of any of the offenses under
178 Subsection (1), (5), or (14) arising from two or more separate incidents.

179 (b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

180 (4) (a) Any driver disqualified for life from driving a commercial motor vehicle under
181 this section may apply to the division for reinstatement of the driver's CDL if the driver:

182 (i) has both voluntarily enrolled in and successfully completed an appropriate

183 rehabilitation program that:

184 (A) meets the standards of the division; and

185 (B) complies with 49 C.F.R. Part 383.51;

186 (ii) has served a minimum disqualification period of 10 years; and

187 (iii) has fully met the standards for reinstatement of commercial motor vehicle driving
188 privileges established by rule of the division.

189 (b) If a reinstated driver is subsequently convicted of another disqualifying offense
190 under this section, the driver is permanently disqualified for life and is ineligible to again apply
191 for a reduction of the lifetime disqualification.

192 (5) A driver of a motor vehicle who holds or is required to hold a CDL is disqualified
193 for life from driving a commercial motor vehicle if the driver uses a motor vehicle in the
194 commission of any felony involving the manufacturing, distributing, or dispensing of a
195 controlled substance, or possession with intent to manufacture, distribute, or dispense a
196 controlled substance and is ineligible to apply for a reduction of the lifetime disqualification
197 under Subsection (4).

198 (6) (a) Subject to Subsection (6)(b), a driver of a commercial motor vehicle who holds
199 or is required to hold a CDL is disqualified for not less than:

200 (i) 60 days from driving a commercial motor vehicle if the driver is convicted of two
201 serious traffic violations; and

202 (ii) 120 days if the driver is convicted of three or more serious traffic violations.

203 (b) The disqualifications under Subsection (6)(a) are effective only if the serious traffic
204 violations:

205 (i) occur within three years of each other;

206 (ii) arise from separate incidents; and

207 (iii) involve the use or operation of a commercial motor vehicle.

208 (c) If a driver of a commercial motor vehicle who holds or is required to hold a CDL is
209 disqualified from driving a commercial motor vehicle and the division receives notice of a
210 subsequent conviction for a serious traffic violation that results in an additional disqualification
211 period under this Subsection (6), the subsequent disqualification period is effective beginning
212 on the ending date of the current serious traffic violation disqualification period.

213 (7) (a) A driver of a commercial motor vehicle who is convicted of violating an

214 out-of-service order while driving a commercial motor vehicle is disqualified from driving a
215 commercial motor vehicle for a period not less than:

216 (i) 90 days but not more than one year if the driver is convicted of a first violation;

217 (ii) one year but not more than five years if, during any ten-year period, the driver is
218 convicted of two violations of out-of-service orders in separate incidents;

219 (iii) three years but not more than five years if, during any ten-year period, the driver is
220 convicted of three or more violations of out-of-service orders in separate incidents;

221 (iv) 180 days but not more than two years if the driver is convicted of a first violation
222 of an out-of-service order while transporting hazardous materials required to be placarded or
223 while operating a motor vehicle designed to transport 16 or more passengers, including the
224 driver; or

225 (v) three years but not more than five years if, during any ten-year period, the driver is
226 convicted of two or more violations, in separate incidents, of an out-of-service order while
227 transporting hazardous materials required to be placarded or while operating a motor vehicle
228 designed to transport 16 or more passengers, including the driver.

229 (b) A driver of a commercial motor vehicle who is convicted of violating an
230 out-of-service order is subject to a civil penalty of not less than \$1,100 nor more than \$2,750.

231 (8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is
232 disqualified for not less than 60 days if the division determines, in its check of the driver's
233 driver license status, application, and record prior to issuing a CDL or at any time after the
234 CDL is issued, that the driver has falsified information required to apply for a CDL in this
235 state.

236 (9) A driver of a commercial motor vehicle who is convicted of violating a
237 railroad-highway grade crossing provision under Section 41-6a-1205, while driving a
238 commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period
239 not less than:

240 (a) 60 days if the driver is convicted of a first violation;

241 (b) 120 days if, during any three-year period, the driver is convicted of a second
242 violation in separate incidents; or

243 (c) one year if, during any three-year period, the driver is convicted of three or more
244 violations in separate incidents.

245 (10) (a) The division shall update its records and notify the CDLIS within 10 days of
246 suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

247 (b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL,
248 the division shall notify the licensing authority of the issuing state or other jurisdiction and the
249 CDLIS within 10 days after the action is taken.

250 (c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this
251 state, the division shall notify the CDLIS within 10 days after the action is taken.

252 (11) (a) The division may immediately suspend or disqualify the CDL of a driver
253 without a hearing or receiving a record of the driver's conviction when the division has reason
254 to believe that the:

- 255 (i) CDL was issued by the division through error or fraud;
- 256 (ii) applicant provided incorrect or incomplete information to the division;
- 257 (iii) applicant cheated on any part of a CDL examination;
- 258 (iv) driver no longer meets the fitness standards required to obtain a CDL; or
- 259 (v) driver poses an imminent hazard.

260 (b) Suspension of a CDL under this Subsection (11) shall be in accordance with
261 Section 53-3-221.

262 (c) If a hearing is held under Section 53-3-221, the division shall then rescind the
263 suspension order or cancel the CDL.

264 (12) (a) Subject to Subsection (12)(b), a driver of a motor vehicle who holds or is
265 required to hold a CDL is disqualified for not less than:

- 266 (i) 60 days from driving a commercial motor vehicle if the driver is convicted of two
267 serious traffic violations; and
- 268 (ii) 120 days if the driver is convicted of three or more serious traffic violations.

269 (b) The disqualifications under Subsection (12)(a) are effective only if the serious
270 traffic violations:

- 271 (i) occur within three years of each other;
- 272 (ii) arise from separate incidents; and
- 273 (iii) result in a denial, suspension, cancellation, or revocation of the non-CDL driving
274 privilege from at least one of the violations.

275 (c) If a driver of a motor vehicle who holds or is required to hold a CDL is disqualified

276 from driving a commercial motor vehicle and the division receives notice of a subsequent
277 conviction for a serious traffic violation that results in an additional disqualification period
278 under this Subsection (12), the subsequent disqualification period is effective beginning on the
279 ending date of the current serious traffic violation disqualification period.

280 (13) (a) Upon receiving a notice that a person has entered into a plea of guilty or no
281 contest to a violation of a disqualifying offense described in this section which plea is held in
282 abeyance pursuant to a plea in abeyance agreement, the division shall disqualify, suspend,
283 cancel, or revoke the person's CDL for the period required under this section for a conviction of
284 that disqualifying offense, even if the charge has been subsequently reduced or dismissed in
285 accordance with the plea in abeyance agreement.

286 (b) The division shall report the plea in abeyance to the CDLIS within 10 days of
287 taking the action under Subsection (13)(a).

288 (c) A plea which is held in abeyance may not be removed from a person's driving
289 record for 10 years from the date of the plea in abeyance agreement, even if the charge is:

- 290 (i) reduced or dismissed in accordance with the plea in abeyance agreement; or
291 (ii) expunged under Section [~~77-18-11~~] 77-40-105.

292 (14) The division shall disqualify the CDL of a driver for an arrest of a violation of
293 Section 41-6a-502 when administrative action is taken against the operator's driving privilege
294 pursuant to Section 53-3-223 for a period of:

- 295 (a) one year; or
296 (b) three years if the violation occurred while transporting hazardous materials.

297 (15) The division may concurrently impose any disqualification periods that arise
298 under this section while a driver is disqualified by the Secretary of the United States
299 Department of Transportation under 49 C.F.R. 383.52 for posing an imminent hazard.

300 Section 3. Section **53-5-704** is amended to read:

301 **53-5-704. Division duties -- Permit to carry concealed firearm -- Certification for**
302 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
303 **suspension, or revocation -- Appeal procedure.**

304 (1) (a) The division or its designated agent shall issue a permit to carry a concealed
305 firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days
306 after receiving an application, unless during the 60-day period the division finds proof that the

307 applicant is not of good character.

308 (b) The permit is valid throughout the state for five years, without restriction, except as
309 otherwise provided by Section 53-5-710.

310 (2) (a) An applicant satisfactorily demonstrates good character if the applicant:

311 (i) has not been convicted of a felony;

312 (ii) has not been convicted of a crime of violence;

313 (iii) has not been convicted of an offense involving the use of alcohol;

314 (iv) has not been convicted of an offense involving the unlawful use of narcotics or
315 other controlled substances;

316 (v) has not been convicted of an offense involving moral turpitude;

317 (vi) has not been convicted of an offense involving domestic violence;

318 (vii) has not been adjudicated by a state or federal court as mentally incompetent,
319 unless the adjudication has been withdrawn or reversed; and

320 (viii) is qualified to purchase and possess a firearm pursuant to Section 76-10-503 and
321 federal law.

322 (b) In assessing good character under Subsection (2)(a), the licensing authority shall
323 consider mitigating circumstances.

324 (3) (a) The division may deny, suspend, or revoke a concealed firearm permit if it has
325 reasonable cause to believe that the applicant has been or is a danger to self or others as
326 demonstrated by evidence, including:

327 (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

328 (ii) past participation in incidents involving unlawful violence or threats of unlawful
329 violence; or

330 (iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.

331 (b) The division may not deny, suspend, or revoke a concealed firearm permit solely
332 for a single conviction for an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

333 (c) In determining whether the applicant has been or is a danger to self or others, the
334 division may inspect:

335 (i) expunged records of arrests and convictions of adults as provided in Section
336 [~~77-18-15~~] 77-40-109; and

337 (ii) juvenile court records as provided in Section 78A-6-209.

338 (d) (i) If a person granted a permit under this part has been charged with a crime of
339 violence in any state, the division shall suspend the permit.

340 (ii) Upon notice of the acquittal of the person charged, or notice of the charges having
341 been dropped, the division shall immediately reinstate the suspended permit.

342 (4) A former peace officer who departs full-time employment as a peace officer, in an
343 honorable manner, shall be issued a concealed firearm permit within five years of that
344 departure if the officer meets the requirements of this section.

345 (5) Except as provided in Subsection (6), the licensing authority shall also require the
346 applicant to provide:

347 (a) the address of the applicant's permanent residence;

348 (b) one recent dated photograph;

349 (c) one set of fingerprints; and

350 (d) evidence of general familiarity with the types of firearms to be concealed as defined
351 in Subsection (7).

352 (6) An applicant who is a law enforcement officer under Section 53-13-103 may
353 provide a letter of good standing from the officer's commanding officer in place of the evidence
354 required by Subsection (5)(d).

355 (7) (a) General familiarity with the types of firearms to be concealed includes training
356 in:

357 (i) the safe loading, unloading, storage, and carrying of the types of firearms to be
358 concealed; and

359 (ii) current laws defining lawful use of a firearm by a private citizen, including lawful
360 self-defense, use of force by a private citizen, including use of deadly force, transportation, and
361 concealment.

362 (b) Evidence of general familiarity with the types of firearms to be concealed may be
363 satisfied by one of the following:

364 (i) completion of a course of instruction conducted by a national, state, or local
365 firearms training organization approved by the division;

366 (ii) certification of general familiarity by a person who has been certified by the
367 division, which may include a law enforcement officer, military or civilian firearms instructor,
368 or hunter safety instructor; or

369 (iii) equivalent experience with a firearm through participation in an organized
370 shooting competition, law enforcement, or military service.

371 (c) Instruction taken by a student under Subsection (7)(b) shall be in person and not
372 through electronic means.

373 (8) (a) An applicant for certification as a Utah concealed firearms instructor shall:

374 (i) be at least 21 years of age;

375 (ii) be currently eligible to possess a firearm under Section 76-10-503 and federal law;

376 (iii) have a current National Rifle Association certification or its equivalent as

377 determined by the division; and

378 (iv) for certificates issued beginning July 1, 2006, have taken a course of instruction
379 and passed a certification test as described in Subsection (8)(c).

380 (b) An instructor's certification is valid for three years from the date of issuance, unless
381 revoked by the division.

382 (c) (i) In order to obtain initial certification or renew a certification, an instructor shall
383 attend an instructional course and pass a test under the direction of the division.

384 (ii) (A) Beginning May 1, 2006, the division shall provide or contract to provide the
385 course referred to in Subsection (8)(c)(i) twice every year.

386 (B) The course shall include instruction on current Utah law related to firearms,
387 including concealed carry statutes and rules, and the use of deadly force by private citizens.

388 (d) (i) Each applicant for certification under this Subsection (8) shall pay a fee of
389 \$50.00 at the time of application for initial certification.

390 (ii) The renewal fee for the certificate is \$25.

391 (iii) The fees paid under Subsections (8)(d)(i) and (ii) may be used by the division as a
392 dedicated credit to cover the cost incurred in maintaining and improving the instruction
393 program required for concealed firearm instructors under this Subsection (8).

394 (9) A certified concealed firearms instructor shall provide each of the instructor's
395 students with the required course of instruction outline approved by the division.

396 (10) (a) (i) A concealed firearms instructor is required to provide a signed certificate to
397 a person successfully completing the offered course of instruction.

398 (ii) The instructor shall sign the certificate with the exact name indicated on the
399 instructor's certification issued by the division under Subsection (8).

400 (iii) (A) The certificate shall also have affixed to it the instructor's official seal, which
401 is the exclusive property of the instructor and may not be used by any other person.

402 (B) The instructor shall destroy the seal upon revocation or expiration of the
403 instructor's certification under Subsection (8).

404 (C) The division shall determine the design and content of the seal to include at least
405 the following:

406 (I) the instructor's name as it appears on the instructor's certification;

407 (II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my
408 certification expires on (the instructor's certification expiration date)"; and

409 (III) the instructor's business or residence address.

410 (D) The seal shall be affixed to each student certificate issued by the instructor in a
411 manner that does not obscure or render illegible any information or signatures contained in the
412 document.

413 (b) The applicant shall provide the certificate to the division in compliance with
414 Subsection (5)(d).

415 (11) The division may deny, suspend, or revoke the certification of a concealed
416 firearms instructor if it has reason to believe the applicant has:

417 (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

418 (b) knowingly and willfully provided false information to the division.

419 (12) A concealed firearms instructor has the same appeal rights as set forth in
420 Subsection (15).

421 (13) In providing instruction and issuing a permit under this part, the concealed
422 firearms instructor and the licensing authority are not vicariously liable for damages caused by
423 the permit holder.

424 (14) An individual who knowingly and willfully provides false information on an
425 application filed under this part is guilty of a class B misdemeanor, and the application may be
426 denied, or the permit may be suspended or revoked.

427 (15) (a) In the event of a denial, suspension, or revocation of a permit, the applicant
428 may file a petition for review with the board within 60 days from the date the denial,
429 suspension, or revocation is received by the applicant by certified mail, return receipt
430 requested.

431 (b) The denial of a permit shall be in writing and shall include the general reasons for
432 the action.

433 (c) If an applicant appeals the denial to the review board, the applicant may have access
434 to the evidence upon which the denial is based in accordance with Title 63G, Chapter 2,
435 Government Records Access and Management Act.

436 (d) On appeal to the board, the agency has the burden of proof by a preponderance of
437 the evidence.

438 (e) (i) Upon a ruling by the board on the appeal of a denial, the division shall issue a
439 final order within 30 days stating the board's decision.

440 (ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

441 (iii) The final order is final agency action for purposes of judicial review under Section
442 63G-4-402.

443 (16) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
444 Administrative Rulemaking Act, necessary to administer this chapter.

445 Section 4. Section **53-6-302** is amended to read:

446 **53-6-302. Applicants for certification examination -- Requirements.**

447 (1) Before being allowed to take a dispatcher certification examination, each applicant
448 shall meet the following requirements:

449 (a) be a United States citizen;

450 (b) be 18 years of age or older at the time of employment as a dispatcher;

451 (c) be a high school graduate or have a G.E.D. equivalent;

452 (d) have not been convicted of a crime for which the applicant could have been
453 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of
454 this or another state;

455 (e) have demonstrated good moral character, as determined by a background
456 investigation; and

457 (f) be free of any physical, emotional, or mental condition that might adversely affect
458 the performance of the applicant's duty as a dispatcher.

459 (2) (a) An application for certification shall be accompanied by a criminal history
460 background check of local, state, and national criminal history files and a background
461 investigation.

462 (b) The costs of the background check and investigation shall be borne by the applicant
463 or the applicant's employing agency.

464 (i) Conviction of any offense not serious enough to be covered under Subsection (1)(d),
465 involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale, or
466 possession for sale of a controlled substance is an indication that an applicant may not be of
467 good moral character and may be grounds for denial of certification or refusal to give a
468 certification examination.

469 (ii) An applicant may be allowed to take a certification examination provisionally,
470 pending completion of any background check or investigation required by this
471 Subsection (2).

472 (3) (a) Notwithstanding [~~Sections 77-18-9 through 77-18-17~~] Title 77, Chapter 40,
473 Utah Expungement Act, regarding expungements, or a similar statute or rule of any other
474 jurisdiction, any conviction obtained in this state or other jurisdiction, including a conviction
475 that has been expunged, dismissed, or treated in a similar manner to either of these procedures,
476 may be considered for purposes of this section.

477 (b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

478 (4) Any background check or background investigation performed pursuant to the
479 requirements of this section shall be to determine eligibility for admission to training programs
480 or qualification for certification examinations and may not be used as a replacement for any
481 background investigations that may be required of an employing agency.

482 Section 5. Section **53-10-202.5** is amended to read:

483 **53-10-202.5. Bureau services -- Fees.**

484 The bureau shall collect fees for the following services:

485 (1) applicant fingerprint card as determined by Section 53-10-108;

486 (2) bail enforcement licensing as determined by Section 53-11-115;

487 (3) concealed firearm permit as determined by Section 53-5-707;

488 (4) [~~expungement~~] application for ~~H~~→ and issuance of a ←~~H~~ certificate of eligibility
488a for expungement as

489 determined by Section [~~77-18-11~~] 77-40-106;

490 (5) firearm purchase background check as determined by Section 76-10-526;

491 (6) name check as determined by Section 53-10-108;

492 (7) private investigator licensing as determined by Section 53-9-111; and

493 (8) right of access as determined by Section 53-10-108.
494 Section 6. Section **53A-6-306** is amended to read:
495 **53A-6-306. Purpose, powers, and duties of UPPAC.**
496 (1) UPPAC shall:
497 (a) adopt rules consistent with applicable law and board rules to carry out its
498 responsibilities under this chapter;
499 (b) make recommendations to the board and professional organizations of educators:
500 (i) concerning standards of professional performance, competence, and ethical conduct
501 for persons holding licenses issued by the board; and
502 (ii) for the improvement of the education profession;
503 (c) establish procedures for receiving and acting upon reports or allegations regarding
504 immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of
505 standards of ethical conduct, performance, or professional competence;
506 (d) investigate any allegation of sexual abuse of a student or a minor by an educator;
507 and
508 (e) establish the manner in which hearings are conducted and reported, and
509 recommendations are submitted to the board for its action.
510 (2) (a) UPPAC may conduct or authorize investigations relating to any matter before
511 UPPAC.
512 (b) Those investigations shall be independent of and separate from any criminal
513 investigation.
514 (c) In conducting an investigation UPPAC or an investigator operating under UPPAC
515 authorization may:
516 (i) administer oaths and issue subpoenas which may be enforced through the state
517 district courts;
518 (ii) receive any evidence related to an alleged offense, including sealed or expunged
519 records released to the board under Section ~~[77-18-15]~~ 77-40-109; and
520 (iii) where reasonable cause exists, initiate a criminal background check on a license
521 holder.
522 (d) (i) A license holder shall receive written notice if a fingerprint check is required as
523 a part of the background check.

524 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and
525 Technical Services Division of the Department of Public Safety shall release the individual's
526 full record, as shown on state, regional, and national records, to UPPAC.

527 (iii) UPPAC shall pay the cost of the background check except as provided under
528 Section 53A-6-401, and the moneys collected shall be credited to the Law Enforcement and
529 Technical Services Division to offset its expenses.

530 (3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has
531 committed a sexual offense against a minor child if the person has:

532 (a) after having had a reasonable opportunity to contest the allegation, been found
533 pursuant to a criminal, civil, or administrative action to have committed a sexual offense
534 against a minor child;

535 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual
536 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance
537 resulting in subsequent dismissal of such a charge, or failed to defend himself against such a
538 charge when given reasonable opportunity to do so; or

539 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to
540 lapse in the face of a charge of having committed a sexual offense against a minor child.

541 (4) In resolving a complaint UPPAC may:

542 (a) dismiss the complaint;

543 (b) issue a warning or reprimand;

544 (c) issue an order of probation requiring an educator to comply with specific conditions
545 in order to retain a license;

546 (d) enter into a written agreement requiring an educator to comply with certain
547 conditions;

548 (e) recommend board action such as revocation or suspension of a license or restriction
549 or prohibition of licensure; or

550 (f) take other appropriate action.

551 (5) UPPAC may not:

552 (a) participate as a party in any dispute relating to negotiations between a school
553 district and its educators;

554 (b) take action against an educator without giving the individual an opportunity for a

555 fair hearing to contest the allegations upon which the action would be based; or

556 (c) take action against an educator unless it finds that the action or the failure of the
557 educator to act impairs the educator's ability to perform the functions of the educator's position.

558 Section 7. Section **76-8-504.6** is amended to read:

559 **76-8-504.6. False or misleading information.**

560 (1) A person is guilty of a class B misdemeanor if the person, not under oath or
561 affirmation, intentionally or knowingly [~~gives~~] provides false or misleading material
562 information to:

563 (a) an officer of the court for the purpose of influencing a criminal proceeding; or

564 (b) the Bureau of Criminal Identification for the purpose of obtaining a certificate of
565 eligibility for expungement.

566 (2) For the purposes of this section "officer of the court" means:

567 (a) prosecutor;

568 (b) judge;

569 (c) court clerk;

570 (d) interpreter;

571 (e) presentence investigator;

572 (f) probation officer;

573 (g) parole officer; and

574 (h) any other person reasonably believed to be gathering information for a criminal
575 proceeding.

576 (3) This section does not apply under circumstances amounting to Section 76-8-306 or
577 any other provision of this code carrying a greater penalty.

578 Section 8. Section **77-27-21.5** is amended to read:

579 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**
580 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

581 (1) As used in this section:

582 (a) "Business day" means a day on which state offices are open for regular business.

583 (b) "Department" means the Department of Corrections.

584 (c) "Division" means the Division of Juvenile Justice Services.

585 (d) "Employed" or "carries on a vocation" includes employment that is full time or part

586 time, whether financially compensated, volunteered, or for the purpose of government or
587 educational benefit.

588 (e) "Indian Country" means:

589 (i) all land within the limits of any Indian reservation under the jurisdiction of the
590 United States government, regardless of the issuance of any patent, and includes rights-of-way
591 running through the reservation;

592 (ii) all dependent Indian communities within the borders of the United States whether
593 within the original or subsequently acquired territory, and whether or not within the limits of a
594 state; and

595 (iii) all Indian allotments, including the Indian allotments to which the Indian titles to
596 have not been extinguished, including rights-of-way running through the allotments.

597 (f) "Jurisdiction" means any state, Indian Country, or United States Territory.

598 (g) "Kidnap offender" means any person other than a natural parent of the victim who:

599 (i) has been convicted in this state of a violation of:

600 (A) Section 76-5-301, kidnapping;

601 (B) Section 76-5-301.1, child kidnapping;

602 (C) Section 76-5-302, aggravated kidnapping; or

603 (D) attempting, soliciting, or conspiring to commit any felony offense listed in

604 Subsections (1)(g)(i)(A) through (C);

605 (ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
606 commit a crime in another jurisdiction that is substantially equivalent to the offenses listed in
607 Subsection (1)(g)(i) and who is:

608 (A) a Utah resident; or

609 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
610 10 or more days, regardless of whether or not the offender intends to permanently reside in this
611 state;

612 (iii) is required to register as an offender in any other jurisdiction, and who, in any 12
613 month period, is in this state for a total of 10 or more days, regardless of whether or not the
614 offender intends to permanently reside in this state;

615 (iv) is a nonresident regularly employed or working in this state, or who is a student in
616 this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any

617 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
618 required to register in the person's state of residence;

619 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of
620 one or more offenses listed in Subsection (1)(g); or

621 (vi) is adjudicated delinquent based on one or more offenses listed in Subsection
622 (1)(g)(i) and who has been committed to the division for secure confinement and remains in the
623 division's custody 30 days prior to the person's 21st birthday.

624 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the
625 minor's noncustodial parent.

626 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex
627 offender as defined in Subsection (1)(n).

628 (j) "Online identifier" or "Internet identifier":

629 (i) means any electronic mail, chat, instant messenger, social networking, or similar
630 name used for Internet communication; and

631 (ii) does not include date of birth, Social Security number, PIN number, or Internet
632 passwords.

633 (k) "Primary residence" means the location where the offender regularly resides, even
634 if the offender intends to move to another location or return to another location at any future
635 date.

636 (l) "Register" means to comply with the requirements of this section and administrative
637 rules of the department made under this section.

638 (m) "Secondary residence" means any real property that the offender owns or has a
639 financial interest in, and any location where, in any 12 month period, the offender stays
640 overnight a total of 10 or more nights when not staying at the offender's primary residence.

641 (n) "Sex offender" means any person:

642 (i) convicted in this state of:

643 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

644 (B) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

645 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

646 (D) Section 76-5-401.1, sexual abuse of a minor;

647 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

- 648 (F) Section 76-5-402, rape;
- 649 (G) Section 76-5-402.1, rape of a child;
- 650 (H) Section 76-5-402.2, object rape;
- 651 (I) Section 76-5-402.3, object rape of a child;
- 652 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 653 (K) Section 76-5-403.1, sodomy on a child;
- 654 (L) Section 76-5-404, forcible sexual abuse;
- 655 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 656 (N) Section 76-5-405, aggravated sexual assault;
- 657 (O) Section 76-5a-3, sexual exploitation of a minor;
- 658 (P) Section 76-7-102, incest;
- 659 (Q) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense
- 660 four or more times;
- 661 (R) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the
- 662 offense four or more times;
- 663 (S) any combination of convictions of Subsection 76-9-702(1), lewdness, and of
- 664 Subsection 76-9-702(3), sexual battery, that total four or more convictions;
- 665 (T) Section 76-9-702.5, lewdness involving a child;
- 666 (U) Section 76-10-1306, aggravated exploitation of prostitution; or
- 667 (V) attempting, soliciting, or conspiring to commit any felony offense listed in
- 668 Subsection (1)(n)(i);
- 669 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 670 commit a crime in another jurisdiction that is substantially equivalent to the offenses listed in
- 671 Subsection (1)(n)(i) and who is:
- 672 (A) a Utah resident; or
- 673 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
- 674 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 675 (iii) who is required to register as an offender in any other jurisdiction, and who, in any
- 676 12 month period, is in the state for a total of 10 or more days, regardless of whether or not the
- 677 offender intends to permanently reside in this state;
- 678 (iv) who is a nonresident regularly employed or working in this state or who is a

679 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i), or
680 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is
681 required to register in the person's jurisdiction of residence;

682 (v) who is found not guilty by reason of insanity in this state, or in any other
683 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or

684 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
685 (1)(n)(i) and who has been committed to the division for secure confinement and remains in the
686 division's custody 30 days prior to the person's 21st birthday.

687 (o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
688 any jurisdiction.

689 (2) The department, to assist in investigating sex-related crimes and in apprehending
690 offenders, shall:

691 (a) develop and operate a system to collect, analyze, maintain, and disseminate
692 information on offenders and sex and kidnap offenses;

693 (b) make information listed in Subsection (27) available to the public; and

694 (c) share information provided by an offender under this section that may not be made
695 available to the public under Subsection (27), but only:

696 (i) for the purposes under this Subsection (2); or

697 (ii) in accordance with Section 63G-2-206.

698 (3) Any law enforcement agency shall, in the manner prescribed by the department,
699 inform the department of:

700 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n),
701 within three business days; and

702 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(g) or
703 (n), within five business days.

704 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n),
705 the convicting court shall within three business days forward a copy of the judgment and
706 sentence to the department.

707 (5) An offender in the custody of the department shall be registered by agents of the
708 department upon:

709 (a) placement on probation;

710 (b) commitment to a secure correctional facility operated by or under contract to the
711 department;

712 (c) release from confinement to parole status, termination or expiration of sentence, or
713 escape;

714 (d) entrance to and release from any community-based residential program operated by
715 or under contract to the department; or

716 (e) termination of probation or parole.

717 (6) An offender who is not in the custody of the department and who is confined in a
718 correctional facility not operated by or under contract to the department shall be registered with
719 the department by the sheriff of the county in which the offender is confined, upon:

720 (a) commitment to the correctional facility; and

721 (b) release from confinement.

722 (7) An offender in the custody of the division shall be registered with the department
723 by the division prior to release from custody.

724 (8) An offender committed to a state mental hospital shall be registered with the
725 department by the hospital upon admission and upon discharge.

726 (9) (a) (i) A municipal or county law enforcement agency shall register an offender
727 who resides within the agency's jurisdiction and is not under the supervision of the Division of
728 Adult Probation and Parole within the department.

729 (ii) In order to conduct offender registration under this section, the agency shall ensure
730 the agency staff responsible for registration:

731 (A) has received initial training by the department and has been certified by the
732 department as qualified and authorized to conduct registrations and enter offender registration
733 information into the registry database; and

734 (B) certify annually with the department.

735 (b) (i) When the department receives offender registration information regarding a
736 change of an offender's primary residence location, the department shall within five days
737 electronically notify the law enforcement agencies that have jurisdiction over the area where:

738 (A) the residence that the offender is leaving is located; and

739 (B) the residence to which the offender is moving is located.

740 (ii) The department shall provide notification under this Subsection (9)(b) if the

741 offender's change of address is between law enforcement agency jurisdictions, or is within one
742 jurisdiction.

743 (c) The department shall make available to offenders required to register under this
744 section the name of the agency, whether it is a local law enforcement agency or the department,
745 that the offender should contact to register, the location for registering, and the requirements of
746 registration.

747 (10) An offender convicted by any other jurisdiction is required to register under
748 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10
749 days of entering the state, regardless of the offender's length of stay.

750 (11) (a) An offender required to register under Subsection (1)(g) or (n) who is under
751 supervision by the department shall register with Division of Adult Probation and Parole.

752 (b) An offender required to register under Subsection (1)(g) or (n) who is no longer
753 under supervision by the department shall register with the police department or sheriff's office
754 that has jurisdiction over the area where the offender resides.

755 (12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for
756 the duration of the sentence and for 10 years after termination of sentence or custody of the
757 division, register every year during the month of the offender's birth, during the month that is
758 the sixth month after the offender's birth month, and also within three business days of every
759 change of the offender's primary residence, any secondary residences, place of employment,
760 vehicle information, or educational information required to be submitted under Subsection
761 (14).

762 (b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in
763 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar
764 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

765 (i) register for the time period, and in the frequency, required by the jurisdiction where
766 the offender was convicted if that jurisdiction's registration period or registration frequency
767 requirement for the offense that the offender was convicted of is greater than the 10 years from
768 completion of the sentence registration period that is required under Subsection (12)(a), or is
769 more frequent than every six months; or

770 (ii) register in accordance with the requirements of Subsection (12)(a), if the
771 jurisdiction's registration period or frequency requirement for the offense that the offender was

772 convicted of is less than the registration period required under Subsection (12)(a), or is less
773 frequent than every six months.

774 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection
775 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the
776 offender's birth, during the month that is the sixth month after the offender's birth month, and
777 also within three business days of every change of the offender's primary residence, any
778 secondary residences, place of employment, vehicle information, or educational information
779 required to be submitted under Subsection (14).

780 (B) This registration requirement is not subject to exemptions and may not be
781 terminated or altered during the offender's lifetime.

782 (ii) Offenses referred to in Subsection (12)(c)(i) are:

783 (A) any offense listed in Subsection (1)(g) or (n) if, at the time of the conviction, the
784 offender has previously been convicted of an offense listed in Subsection (1)(g) or (n) or has
785 previously been required to register as a sex offender for an offense committed as a juvenile;

786 (B) a conviction for any of the following offenses, including attempting, soliciting, or
787 conspiring to commit any felony of:

788 (I) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
789 the victim;

790 (II) Section 76-5-402, rape;

791 (III) Section 76-5-402.1, rape of a child;

792 (IV) Section 76-5-402.2, object rape;

793 (V) Section 76-5-402.3, object rape of a child;

794 (VI) Section 76-5-403.1, sodomy on a child;

795 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

796 (VIII) Section 76-5-405, aggravated sexual assault;

797 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;

798 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
799 of the victim;

800 (E) Section 76-5-403, forcible sodomy;

801 (F) Section 76-5-404.1, sexual abuse of a child; or

802 (G) Section 76-5a-3, sexual exploitation of a minor.

803 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a
804 secure facility or in a state mental hospital is not required to register during the period of
805 confinement.

806 (e) An offender who is required to register under this Subsection (12) shall surrender
807 the offender's license, certificate, or identification card as required under Subsection
808 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
809 provided under Section 53-3-205 or 53-3-804.

810 (f) A sex offender who violates Section 77-27-21.8 while required to register under this
811 section shall register for an additional five years subsequent to the registration period otherwise
812 required under this section.

813 (13) An agency in the state that registers an offender on probation, an offender who has
814 been released from confinement to parole status or termination, or an offender whose sentence
815 has expired shall inform the offender of the duty to comply with:

816 (a) the continuing registration requirements of this section during the period of
817 registration required in Subsection (12), including:

818 (i) notification to the state agencies in the states where the registrant presently resides
819 and plans to reside when moving across state lines;

820 (ii) verification of address at least every 60 days pursuant to a parole agreement for
821 lifetime parolees; and

822 (iii) notification to the out-of-state agency where the offender is living, whether or not
823 the offender is a resident of that state; and

824 (b) the driver license certificate or identification card surrender requirement under
825 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
826 53-3-804.

827 (14) An offender shall provide the department or the registering entity with the
828 following information:

829 (a) all names and aliases by which the offender is or has been known;

830 (b) the addresses of the offender's primary and secondary residences;

831 (c) a physical description, including the offender's date of birth, height, weight, eye and
832 hair color;

833 (d) the make, model, color, year, plate number, and vehicle identification number of

- 834 any vehicle or vehicles the offender owns or regularly drives;
- 835 (e) a current photograph of the offender;
- 836 (f) a set of fingerprints, if one has not already been provided;
- 837 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
838 already been provided;
- 839 (h) telephone numbers and any other designations used by the offender for routing or
840 self-identification in telephonic communications from fixed locations or cellular telephones;
- 841 (i) Internet identifiers and the addresses the offender uses for routing or
842 self-identification in Internet communications or postings;
- 843 (j) the name and Internet address of all websites on which the sex offender is registered
844 using an online identifier, including all online identifiers used to access those websites;
- 845 (k) a copy of the offender's passport, if a passport has been issued to the offender;
- 846 (l) if the offender is an alien, all documents establishing the offender's immigration
847 status;
- 848 (m) all professional licenses that authorize the offender to engage in an occupation or
849 carry out a trade or business, including any identifiers, such as numbers;
- 850 (n) each educational institution in Utah at which the offender is employed, carries on a
851 vocation, or is a student, and any change of enrollment or employment status of the offender at
852 any educational institution;
- 853 (o) the name and the address of any place where the offender is employed or will be
854 employed;
- 855 (p) the name and the address of any place where the offender works as a volunteer or
856 will work as a volunteer; and
- 857 (q) the offender's Social Security number.
- 858 (15) The department shall:
- 859 (a) provide the following additional information when available:
- 860 (i) the crimes the offender has been convicted of or adjudicated delinquent for;
- 861 (ii) a description of the offender's primary and secondary targets; and
- 862 (iii) any other relevant identifying information as determined by the department;
- 863 (b) maintain the Sex Offender Notification and Registration website; and
- 864 (c) ensure that the registration information collected regarding an offender's enrollment

865 or employment at an educational institution is:

866 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
867 where the institution is located if the educational institution is an institution of higher
868 education; or

869 (B) promptly made available to the district superintendent of the school district where
870 the offender is enrolled if the educational institution is an institution of primary education; and

871 (ii) entered into the appropriate state records or data system.

872 (16) (a) An offender who knowingly fails to register under this section or provides
873 false or incomplete information is guilty of:

874 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not
875 less than 90 days and also at least one year of probation if:

876 (A) the offender is required to register for a felony conviction or adjudicated delinquent
877 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
878 (1)(g)(i) or (n)(i); or

879 (B) the offender is required to register for the offender's lifetime under Subsection
880 (12)(c); or

881 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
882 not fewer than 90 days and also at least one year of probation if the offender is required to
883 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
884 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).

885 (b) Neither the court nor the Board of Pardons and Parole may release a person who
886 violates this section from serving the term required under Subsection (16)(a). This Subsection
887 (16)(b) supersedes any other provision of the law contrary to this section.

888 (c) The offender shall register for an additional year for every year in which the
889 offender does not comply with the registration requirements of this section.

890 (17) Notwithstanding Title 63G, Chapter 2, Government Records Access and
891 Management Act, information under Subsection (15) that is collected and released under
892 Subsection (27) is public information, unless otherwise restricted under Subsection (2)(c).

893 (18) (a) If an offender is to be temporarily sent outside a secure facility in which the
894 offender is confined on any assignment, including, without limitation, firefighting or disaster
895 control, the official who has custody of the offender shall, within a reasonable time prior to

896 removal from the secure facility, notify the local law enforcement agencies where the
897 assignment is to be filled.

898 (b) This Subsection (18) does not apply to any person temporarily released under guard
899 from the institution in which the person is confined.

900 (19) Notwithstanding [~~Sections 77-18-9 through 77-18-14 regarding expungement~~]
901 Title 77, Chapter 40, Utah Expungement Act, a person convicted of any offense listed in
902 Subsection (1)(g) or (n) is not relieved from the responsibility to register as required under this
903 section.

904 (20) Notwithstanding Section 42-1-1, an offender:

905 (a) may not change the offender's name:

906 (i) while under the jurisdiction of the department; and

907 (ii) until the registration requirements of this statute have expired; and

908 (b) may not change the offender's name at any time, if registration is for life under
909 Subsection (12)(c).

910 (21) The department may make administrative rules necessary to implement this
911 section, including:

912 (a) the method for dissemination of the information; and

913 (b) instructions to the public regarding the use of the information.

914 (22) Any information regarding the identity or location of a victim shall be redacted by
915 the department from information provided under Subsections (14) and (15).

916 (23) This section does not create or impose any duty on any person to request or obtain
917 information regarding any sex offender from the department.

918 (24) The department shall maintain a Sex Offender Notification and Registration
919 website on the Internet, which shall contain a disclaimer informing the public:

920 (a) the information contained on the site is obtained from offenders and the department
921 does not guarantee its accuracy or completeness;

922 (b) members of the public are not allowed to use the information to harass or threaten
923 offenders or members of their families; and

924 (c) harassment, stalking, or threats against offenders or their families are prohibited and
925 doing so may violate Utah criminal laws.

926 (25) The Sex Offender Notification and Registration website shall be indexed by both

927 the surname of the offender and by postal codes.

928 (26) The department shall construct the Sex Offender Notification and Registration
929 website so that users, before accessing registry information, must indicate that they have read
930 the disclaimer, understand it, and agree to comply with its terms.

931 (27) The Sex Offender Notification and Registration website shall include the
932 following registry information:

933 (a) all names and aliases by which the offender is or has been known, but not including
934 any online or Internet identifiers;

935 (b) the addresses of the offender's primary, secondary, and temporary residences;

936 (c) a physical description, including the offender's date of birth, height, weight, and eye
937 and hair color;

938 (d) the make, model, color, year, and plate number of any vehicle or vehicles the
939 offender owns or regularly drives;

940 (e) a current photograph of the offender;

941 (f) a list of all professional licenses that authorize the offender to engage in an
942 occupation or carry out a trade or business;

943 (g) each educational institution in Utah at which the offender is employed, carries on a
944 vocation, or is a student;

945 (h) a list of places where the offender works as a volunteer; and

946 (i) the crimes listed in Subsections (1)(g) and (1)(n) that the offender has been
947 convicted of or for which the offender has been adjudicated delinquent in juvenile court.

948 (28) The department, its personnel, and any individual or entity acting at the request or
949 upon the direction of the department are immune from civil liability for damages for good faith
950 compliance with this section and will be presumed to have acted in good faith by reporting
951 information.

952 (29) The department shall redact information that, if disclosed, could reasonably
953 identify a victim.

954 (30) (a) Each offender required to register under Subsection (12) shall, in the month of
955 the offender's birth, pay to the department an annual fee of \$100 each year the offender is
956 subject to the registration requirements of this section.

957 (b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility

958 or in a state mental hospital is not required to pay the annual fee.

959 (c) The department shall deposit fees under this Subsection (30) in the General Fund as
960 a dedicated credit, to be used by the department for maintaining the offender registry under this
961 section and monitoring offender registration compliance, including the costs of:

- 962 (i) data entry;
- 963 (ii) processing registration packets;
- 964 (iii) updating registry information;
- 965 (iv) ensuring offender compliance with registration requirements under this section;

966 and

967 (v) apprehending offenders who are in violation of the offender registration
968 requirements under this section.

969 (31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), a sex offender is not
970 required to provide the department with:

971 (a) the offender's online identifier and password used exclusively for the offender's
972 employment on equipment provided by an employer and used to access the employer's private
973 network; or

974 (b) online identifiers for the offender's financial accounts, including any bank,
975 retirement, or investment accounts.

976 Section 9. Section **77-38-14** is amended to read:

977 **77-38-14. Notice of expungement petition -- Victim's right to object.**

978 (1) The Department of Corrections or the Juvenile Probation Department shall prepare
979 a document explaining the right of a victim or a victim's representative to object to a petition
980 for expungement under Section [~~77-18-11~~] 77-40-107 or 78A-6-1105 and the procedures for
981 obtaining notice of any such petition. The department or division shall also provide each trial
982 court a copy of the document which has jurisdiction over delinquencies or criminal offenses
983 subject to expungement.

984 (2) The prosecuting attorney in any case leading to a conviction or an adjudication
985 subject to expungement shall provide a copy of the document to each person who would be
986 entitled to notice of a petition for expungement under Sections [~~77-18-11~~] 77-40-107 and
987 78A-6-1105.

988 Section 10. Section **77-40-101** is enacted to read:

989 CHAPTER 40. UTAH EXPUNGEMENT ACT

990 77-40-101. Title.991 This chapter is known as the "Utah Expungement Act."992 Section 11. Section ~~77-40-102~~, which is renumbered from Section 77-18-9 is
993 renumbered and amended to read:994 ~~[77-18-9].~~ 77-40-102. Definitions.

995 As used in this chapter:

996 (1) "Administrative finding" means a decision upon a question of fact reached by an
997 administrative agency following an administrative hearing or other procedure satisfying the
998 requirements of due process.999 (2) "Agency" means a state, county, or local government entity that generates or
1000 maintains records relating to an investigation, arrest, detention, or conviction for an offense for
1001 which expungement may be ordered.1002 (3) "Bureau" means the Bureau of Criminal Identification of the Department of Public
1003 Safety established in Section 53-10-201.1004 ~~[(2)]~~ (4) "Certificate of eligibility" means a document issued by the [division] bureau
1005 stating that the criminal record which is the subject of a petition for expungement is eligible for
1006 expungement.1007 ~~[(3)]~~ (5) "Conviction" means judgment by a criminal court on a verdict or finding of
1008 guilty after trial, a plea of guilty, or a plea of nolo contendere.1009 ~~[(4)]~~ (6) ["Division" means the Criminal Investigations and Technical Services
1010 Division of] "Department" means the Department of Public Safety established in Section
1011 [53-10-103] 53-1-103.1012 ~~[(5)]~~ "Expungement" means the sealing or destruction of a criminal record, including
1013 records of the investigation, arrest, detention, or conviction of the petitioner.]1014 (7) "Expunge" means to seal or otherwise restrict access to the petitioner's record of
1015 arrest, investigation, detention, or conviction held by an agency.1016 ~~[(6)]~~ (8) "Jurisdiction" means [an area of authority] a state, district, province, political
1017 subdivision, territory, or possession of the United States or any foreign country.1018 ~~[(7)]~~ (9) "Petitioner" means a person seeking expungement under this chapter.1019 ~~[(8) Second degree forcible felony includes:]~~

- 1020 [~~(a) aggravated assault, if the person intentionally causes serious bodily injury;~~]
1021 [~~(b) aggravated assault by a prisoner;~~]
1022 [~~(c) aggravated assault on school premises;~~]
1023 [~~(d) intentional child abuse;~~]
1024 [~~(e) criminally negligent automobile homicide;~~]
1025 [~~(f) reckless child abuse homicide;~~]
1026 [~~(g) mayhem;~~]
1027 [~~(h) manslaughter;~~]
1028 [~~(i) kidnaping;~~]
1029 [~~(j) forcible sexual abuse;~~]
1030 [~~(k) robbery;~~]
1031 [~~(l) felony fleeing causing death or serious bodily injury; or]~~
1032 [~~(m) delivery of an explosive to a common carrier.]~~

1033 Section 12. Section **77-40-103** is enacted to read:

1034 **77-40-103. Expungement procedure overview.**

1035 The process for the expungement of records regarding the arrest, investigation,
1036 detention, and conviction of a petitioner in this state is as follows:

1037 (1) The petitioner shall apply to the bureau for a certificate of eligibility for
1038 expungement and pay the application fee established by the department.

1039 (2) Once the eligibility process is complete, the bureau shall notify the petitioner.

1040 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,
1041 the petitioner shall pay the issuance fee established by the department.

1042 (4) The petitioner shall file the certificate of eligibility with a petition for expungement
1043 in the court in which the proceedings occurred. If there were no court proceedings, the petition
1044 may be filed in the district court where the arrest occurred.

1045 (5) The petitioner shall deliver a copy of the petition and certificate to the prosecutorial
1046 office that handled the court proceedings. If there were no court proceedings, the copy of the
1047 petition and certificate shall be delivered to the county attorney's office in the jurisdiction
1048 where the arrest occurred.

1049 (6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be
1050 set by the court and the prosecutor and victim notified of the date.

1051 (7) If the court requests a response from Adult Probation and Parole and a response is
 1052 received, the petitioner may file a written reply to the response within 15 days of receipt of the
 1053 response.

1054 (8) An expungement may be granted without a hearing if no objection is received.

1055 (9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all
 1056 government agencies in possession of records relating to the expunged matter.

1057 Section 13. Section **77-40-104** is enacted to read:

1058 **77-40-104. Eligibility for expungement of records of arrest, investigation, and**
 1059 **detention -- Requirements.**

1060 (1) A person who has been arrested with or without a warrant may apply to the bureau
 1061 for a certificate of eligibility to expunge all records of arrest, investigation, and detention which
 1062 may have been made in the case, subject to the following conditions:

1063 (a) at least 30 days have passed since the arrest for which a certificate of eligibility is
 1064 sought;

1065 (b) there have been no intervening arrests; and

1066 (c) one of the following occurred:

1067 (i) charges were screened by the investigating law enforcement agency and the
 1068 prosecutor has made a final determination that no charges will be filed;

1069 (ii) the action against the person was dismissed with prejudice;

1070 (iii) the person was acquitted at trial; or

1071 (iv) the statute of limitations has expired on the ~~§~~→ [charges] offense ←~~§~~ .

1072 (2) Notwithstanding Subsection (1)(a), a petitioner seeking expungement under
 1073 Subsection (1)(c)(iii) shall be issued a certificate of eligibility on an expedited basis.

1074 Section 14. Section **77-40-105** is enacted to read:

1075 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

1076 (1) A person convicted of a crime may apply to the bureau for a certificate of eligibility
 1077 to expunge the record of conviction as provided in this section.

1078 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

1079 (a) the conviction for which expungement is sought is:

1080 (i) a capital felony;

1081 (ii) a first degree felony;

- 1082 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
 1083 (iv) automobile homicide;
 1084 (v) a felony violation of Subsection 41-6a-501(2); or
 1085 (vi) a registerable sex offense as defined in Subsection 77-27-21.5(1)(n);
 1086 (b) a proceeding involving a crime is pending or being investigated in any jurisdiction
 1087 against the petitioner; or
 1088 (c) the petitioner intentionally or knowingly provides false or misleading information
 1089 on the application for a certificate of eligibility.
 1090 (3) A petitioner seeking to obtain expungement for a criminal record is not eligible to
 1091 receive a certificate of eligibility from the bureau until all of the following have occurred:
 1092 (a) all fines and interest ordered by the court have been paid in full;
 1093 (b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board
 1094 of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and
 1095 (c) the following time periods have elapsed from the date the petitioner was convicted
 1096 or released from incarceration, parole, or probation, whichever occurred last, for each
 1097 conviction the petitioner seeks to expunge:
 1098 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
 1099 felony violation of Subsection 58-37-8(2)(g);
 1100 (ii) seven years in the case of a felony;
 1101 (iii) five years in the case of a class A misdemeanor;
 1102 (iv) four years in the case of a class B misdemeanor; or
 1103 (v) three years in the case of any other misdemeanor or infraction.
 1104 (4) ~~§→ [(a)] ←~~§~~ ~~¶~~→ [A petitioner may expunge one felony conviction:~~
 1105 ~~(b) A petitioner may expunge three misdemeanor convictions, not arising out of a~~
 1106 ~~single criminal episode;~~
 1107 ~~(c) A petitioner may not expunge more than four convictions, not arising out of a single~~
 1108 ~~criminal episode. This restriction applies regardless of the jurisdiction in which the~~
 1109 ~~expungement was obtained.] ~~§~~→ [A petitioner is not eligible to receive a certificate of eligibility from~~
 1109a ~~the bureau for any record of conviction if the petitioner's criminal history contains:~~
 1109b ~~(i) more than one criminal episode which contains a conviction for a crime that would~~
 1109c ~~be a felony under Utah law;~~
 1109d ~~(ii) more than two criminal episodes which contain a conviction for a crime that would~~
 1109e ~~be a class A misdemeanor or felony under Utah law; or~~
 1109f ~~(iii) more than three criminal episodes which contain a conviction for a crime that~~
 1109g ~~would be a class B or A misdemeanor or felony under Utah law.] ←~~§~~~~

1109h ~~§~~ → [(b) A petitioner may not expunge more than four criminal episodes which contain a
 1109i conviction for a crime that would be any type of misdemeanor or felony under Utah law:
 1110 ~~[(d)] (c) ←~~ ~~¶~~ Infractions are not included in determining the total number of
 1110a ~~¶~~ → [convictions] criminal episodes ← ~~¶~~ a person
 1111 may expunge:
 1111a ~~¶~~ → (d) The restrictions in this Subsection (4) apply regardless of whether the petitioner
 1111b has expunged any convictions or any criminal episodes and regardless of the jurisdiction in
 1111c which the expungement occurred. ← ~~¶~~ The bureau may not issue a certificate of eligibility if, at
 1111d the time the petitioner seeks a certificate of eligibility, the bureau determines that the
 1111e petitioner's criminal history, including previously expunged convictions, contains any of the
 1111f following:
 1111g (a) two or more felony convictions, each of which is contained in a separate criminal § → [court
 1111h case] episode ← § ;
 1111i (b) any combination of three or more convictions that include two class A misdemeanor
 1111j convictions, each of which is contained in a separate criminal § → [court case] episode ← § ;
 1111k (c) any combination of four or more convictions that include three class B misdemeanor
 1111l convictions, each of which is contained in a separate criminal § → [court case] episode ← § ; or
 1111m (d) five or more convictions of any degree whether misdemeanor or felony, excluding
 1111n infractions, each of which is contained in a separate criminal § → [court case] episode. ← §
 1112 (5) § → [Notwithstanding Subsection (2), if a person] If the petitioner ← § has received a
 1112a pardon from the Utah

1113 Board of Pardons and Parole, the §→ [person] petitioner ←§ is entitled to a certificate of eligibility
 1113a for all pardoned
 1114 crimes.

1115 Section 15. Section **77-40-106** is enacted to read:

1116 **77-40-106. Application for certificate of eligibility -- Fees.**

1117 (1) (a) A petitioner seeking to obtain an expungement for a criminal record shall apply
 1118 for a certificate of eligibility from the bureau.

1119 (b) A petitioner who intentionally or knowingly provides any false or misleading
 1120 information to the bureau when applying for a certificate of eligibility is guilty of a class B
 1121 misdemeanor and subject to prosecution under Section 76-8-504.6.

1122 (c) Regardless of whether the petitioner is prosecuted, the bureau may deny a certificate
 1123 of eligibility to anyone providing false information on an application.

1124 (2) (a) The bureau shall perform a check of records of governmental agencies,
 1125 including national criminal data bases, to determine whether a petitioner is eligible to receive a
 1126 certificate of eligibility under this chapter.

1126a **Ĥ→ (b) For purposes of determining eligibility under this chapter, the bureau may**
 1126b **review records of arrest, investigation, detention and conviction that have been previously**
 1126c **expunged §→ , regardless of the jurisdiction in which the expungement occurred ←§ .**

1127 **[Ĥ] (c) ←Ĥ If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105,**
 1127a **the**
 1128 **bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of**
 1129 **90 days from the date the certificate is issued.**

1130 **Ĥ→ [Ĥ] (d) ←Ĥ If, after reasonable research, a disposition for an arrest on the criminal**
 1130a **history file is**
 1131 **unobtainable, the bureau may issue a special certificate giving determination of eligibility to**
 1132 **the court.**

1133 (3) (a) The bureau shall charge application and issuance fees for a certificate of
 1134 eligibility in accordance with the process in Section 63J-1-504.

1135 (b) The application fee shall be paid at the time the petitioner submits an application
 1136 for a certificate of eligibility to the bureau.

1137 (c) If the bureau determines that the issuance of a certificate of eligibility is
 1138 appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of
 1139 eligibility unless Subsection (3)(d) applies.

1140 (d) An issuance fee may not be assessed against a petitioner who qualifies for a
 1141 certificate of eligibility under Section 77-40-104 unless the charges were dismissed pursuant to
 1142 a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion
 1143 agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

1144 (e) Funds generated under this Subsection (3) shall be deposited in the General Fund as
1145 a dedicated credit by the department to cover the costs incurred in determining eligibility.

1146 Section 16. Section **77-40-107** is enacted to read:

1147 **77-40-107. Petition for expungement -- Prosecutorial responsibility-- Hearing --**
1148 **Standard of proof -- Exception.**

1149 (1) The petitioner shall file a petition for expungement and the certificate of eligibility
1150 in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to
1151 the prosecuting agency.

1152 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting
1153 attorney shall provide notice of the expungement request by first-class mail to the victim at the
1154 most recent address of record on file.

1155 (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and
1156 rules applicable to the petition, state that the victim has a right to object to the expungement,
1157 and provide instructions for registering an objection with the court.

1158 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition
1159 by filing a recommendation or objection with the court within 30 days after receipt of the
1160 petition.

1161 (4) (a) The court may request a written response to the petition from the Division of
1162 Adult Probation and Parole within the Department of Corrections.

1163 (b) If requested, the response prepared by Adult Probation and Parole shall include:

1164 (i) the reasons probation was terminated; and

1165 (ii) certification that the petitioner has completed all requirements of sentencing and
1166 probation or parole.

1167 (c) A copy of the response shall be provided to the petitioner and the prosecuting
1168 attorney.

1169 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
1170 the victim and the response prepared by Adult Probation and Parole within 15 days after
1171 receipt.

1172 (6) (a) If the court receives an objection concerning the petition from any party, the
1173 court shall set a date for a hearing and notify the petitioner, the prosecuting attorney, and the
1174 victim of the date set for the hearing.

1175 (b) The petitioner, the prosecuting attorney, the victim, and any other person who has
1176 relevant information about the petitioner may testify at the hearing.

1177 (c) The court shall review the petition, the certificate of eligibility, and any written
1178 responses submitted regarding the petition.

1179 (7) If no objection is received within 60 days from the date the petition for
1180 expungement was filed with the court, the expungement may be granted without a hearing.

1181 (8) The court shall issue an order of expungement if it finds by clear and convincing
1182 evidence that:

1183 (a) the petition and certificate of eligibility are sufficient;

1184 (b) the statutory requirements have been met; and

1185 (c) it is not contrary to the interests of the public to grant the expungement.

1186 (9) A court may not expunge a conviction of an offense for which a certificate of
1187 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

1188 Section 17. Section **77-40-108**, which is renumbered from Section 77-18-14 is
1189 renumbered and amended to read:

1190 **[77-18-14]. 77-40-108. Distribution of order -- Redaction -- Receipt of order --**
1191 **Administrative proceedings -- Bureau requirements.**

1192 ~~[(1) Except as otherwise provided in this chapter, upon approval of a petition for~~
1193 ~~expungement, the court shall enter an order to expunge all records in the petitioner's case which~~
1194 ~~are in the custody of that court or in the custody of any other court, agency, or official.]~~

1195 ~~[(2) The petitioner shall be responsible for service of the order of expungement to all~~
1196 ~~affected state, county, and local entities, agencies, and officials including the court, arresting~~
1197 ~~agency, booking agency, Department of Corrections, and the division.]~~

1198 (1) The petitioner shall be responsible for delivering a copy of the order of
1199 expungement to all affected agencies and officials including the court, arresting agency,
1200 booking agency, Department of Corrections, and the bureau.

1201 (2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to
1202 respond differently, a person who has received an expungement of an arrest or conviction
1203 under this chapter may respond to any inquiry as though the arrest or conviction did not occur.

1204 (3) The ~~[division]~~ bureau shall forward a copy of the expungement order to the Federal
1205 Bureau of Investigation.

1206 (4) An agency receiving an expungement order shall expunge the petitioner's
1207 identifying information contained in records in its possession relating to the incident for which
1208 expungement is ordered.

1209 ~~[(4) In order to avoid destruction or sealing of the records in whole or in part, any state,~~
1210 ~~county, or local entity, agency, or official receiving an expungement order shall only expunge~~
1211 ~~all references to the petitioner's name. The petitioner, based on good cause, may petition the~~
1212 ~~court to expunge the records in whole or in part.]~~

1213 ~~[(5) No state, county, or local entity, agency, or official may, after receiving service of~~
1214 ~~an expungement order, divulge information contained in the expunged portion of the record.]~~

1215 (5) Unless ordered by a court to do so, a government agency or official may not divulge
1216 identifying information regarding the petitioner contained in a record of arrest, investigation,
1217 detention, or conviction after receiving an expungement order.

1218 (6) (a) An order of expungement [~~shall~~] may not restrict an agency's use or
1219 dissemination of records in its ordinary course of business until the agency has received
1220 [~~service of~~] a copy of the order.

1221 (b) Any action taken by an agency after issuance of the order but prior to the agency's
1222 receipt of a copy of the order may not be invalidated by the order.

1223 (7) An order of expungement may not:

1224 (a) terminate or invalidate any pending administrative proceedings or actions of which
1225 the petitioner had notice according to the records of the administrative body prior to issuance of
1226 the expungement order;

1227 (b) affect the enforcement of any order or findings issued by an administrative body
1228 pursuant to its lawful authority prior to issuance of the expungement order; or

1229 (c) remove any evidence relating to the petitioner including records of arrest, which the
1230 administrative body has used or may use in these proceedings.

1231 (8) The [~~division~~] bureau shall provide clear written directions to the petitioner along
1232 with a list of [the] agencies known to be affected by [this subsection with clear written
1233 directions regarding the requirements of this section] the order of expungement.

1234 ~~[(9) If, after obtaining an expungement, the petitioner is charged with a felony, the state~~
1235 ~~may petition the court to open the expunged records upon a showing of good cause.]~~

1236 Section 18. Section **77-40-109**, which is renumbered from Section 77-18-15 is

1237 renumbered and amended to read:

1238 ~~[77-18-15].~~ **77-40-109. Retention and release of expunged records -- Agencies.**

1239 (1) The ~~[division]~~ bureau shall keep, index, and maintain all expunged records of
1240 arrests and convictions.

1241 (2) Employees of the ~~[division]~~ bureau may not divulge any information contained in
1242 its index to any person or agency without a court order~~[-, except to the following:]~~ unless
1243 specifically authorized by statute. The following organizations may receive information
1244 contained in expunged records upon specific request:

1245 (a) the Board of Pardons and Parole;

1246 (b) ~~[the]~~ Peace Officer Standards and Training;

1247 (c) federal authorities, unless prohibited by federal law;

1248 (d) the Division of Occupational and Professional Licensing; and

1249 (e) the State Office of Education.

1250 (3) The ~~[division]~~ bureau may also use the information in its index ~~[for the purpose of~~
1251 ~~establishing good character for issuance of a concealed firearm permit]~~ as provided in Section
1252 53-5-704.

1253 ~~[(4) A person whose records are released under Subsection (2) shall be given a~~
1254 ~~reasonable opportunity by the recipient agency to challenge and explain any information in the~~
1255 ~~records and to challenge the relevancy of that information before a final determination is made~~
1256 ~~by the agency.]~~

1257 ~~[(5) A court may permit inspection or release of an expunged record only upon petition~~
1258 ~~by the person who is the subject of the record and only to the persons named in the petition.]~~

1259 (4) If, after obtaining an expungement, the petitioner is charged with a felony, the state
1260 may petition the court to open the expunged records upon a showing of good cause.

1261 ~~[(6)]~~ (5) (a) For judicial sentencing, a court may order any records [sealed] expunged
1262 under this [section] chapter to be opened and admitted into evidence.

1263 (b) The records are confidential and are available for inspection only by the court,
1264 parties, counsel for the parties, and any other person who is authorized by the court to inspect
1265 them.

1266 (c) At the end of the action or proceeding, the court shall order the records ~~[sealed]~~
1267 expunged again.

1268 (d) Any person authorized by this Subsection (5) to view expunged records may not
1269 reveal or release any information obtained from the expunged records to anyone outside the
1270 court.

1271 [~~7~~] (6) Records released under this [~~section~~] chapter are classified as protected under
1272 Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2,
1273 Access to Records.

1274 Section 19. Section **77-40-110** is enacted to read:

1275 **77-40-110. Use of expunged records -- Individuals -- Use in civil actions.**

1276 Records expunged under Section 77-40-104 or 77-40-105 may be released to or viewed
1277 by the following individuals:

1278 (1) the petitioner;

1279 (2) a law enforcement officer who was involved in the case, for use solely in the
1280 officer's defense of a civil action arising out of the officer's involvement with the petitioner in
1281 that particular case; and

1282 (3) parties to a civil action arising out of the expunged incident, providing the
1283 information is kept confidential and utilized only in the action.

1284 Section 20. Section **77-40-111** is enacted to read:

1285 **77-40-111. Rulemaking.**

1286 The department may make rules to:

1287 (1) implement procedures for applying for certificates of eligibility;

1288 (2) specify procedures for receiving a certificate of eligibility; and

1289 (3) create forms and determine information necessary to be provided to the bureau.

1290 Section 21. Section **77-40-112**, which is renumbered from Section 77-18-16 is
1291 renumbered and amended to read:

1292 [~~77-18-16~~]. **77-40-112. Penalty.**

1293 Any person who willfully violates any prohibition in this chapter is guilty of a class A
1294 misdemeanor unless the prohibition specifically indicates a different penalty.

1295 Section 22. Section **77-40-113**, which is renumbered from Section 77-18-17 is
1296 renumbered and amended to read:

1297 [~~77-18-17~~]. **77-40-113. Retroactive application.**

1298 The provisions of [~~Sections 77-18-9 through 77-18-17~~] this chapter apply retroactively

1299 to all arrests and convictions regardless of the date on which the arrests were made or
1300 convictions were entered.

1301 Section 23. Section **78A-2-301** is amended to read:

1302 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

1303 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
1304 court of record not governed by another subsection is \$360.

1305 (b) The fee for filing a complaint or petition is:

1306 (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs,
1307 interest, and attorney fees is \$2,000 or less;

1308 (ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
1309 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

1310 (iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;

1311 (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
1312 4, Separate Maintenance; and

1313 (v) \$35 for a motion for temporary separation order filed under Section 30-3-4.5.

1314 (c) The fee for filing a small claims affidavit is:

1315 (i) \$60 if the claim for damages or amount in interpleader exclusive of court costs,
1316 interest, and attorney fees is \$2,000 or less;

1317 (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs,
1318 interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

1319 (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
1320 interest, and attorney fees is \$7,500 or more.

1321 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
1322 complaint, or other claim for relief against an existing or joined party other than the original
1323 complaint or petition is:

1324 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
1325 \$2,000 or less;

1326 (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is
1327 greater than \$2,000 and less than \$10,000;

1328 (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is
1329 \$10,000 or more, or the party seeks relief other than monetary damages; and

1330 (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
1331 Chapter 4, Separate Maintenance.

1332 (e) The fee for filing a small claims counter affidavit is:

1333 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
1334 \$2,000 or less;

1335 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
1336 greater than \$2,000, but less than \$7,500; and

1337 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
1338 \$7,500 or more.

1339 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
1340 action already before the court is determined under Subsection (1)(b) based on the amount
1341 deposited.

1342 (g) The fee for filing a petition is:

1343 (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims
1344 department; and

1345 (ii) \$65 for an appeal of a municipal administrative determination in accordance with
1346 Section 10-3-703.7.

1347 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
1348 petition for writ of certiorari is \$225.

1349 (i) [~~(i) Except for a petition filed under Subsection 77-18-10(2), the~~] The fee for filing
1350 a petition for expungement is \$135.

1351 [~~(ii) There is no fee for a petition filed under Subsection 77-18-10(2).]~~

1352 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
1353 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
1354 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
1355 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
1356 Act.

1357 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
1358 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
1359 Defense Account, as provided in Section 51-9-408.

1360 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),

1361 and (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in
1362 Section 78B-6-209.

1363 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
1364 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
1365 deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

1366 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
1367 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
1368 Security Account, as provided in Section 78A-2-602.

1369 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
1370 United States is \$35.

1371 (l) The fee for filing probate or child custody documents from another state is \$35.

1372 (m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
1373 Utah State Tax Commission is \$30.

1374 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
1375 or a judgment, order, or decree of an administrative agency, commission, board, council, or
1376 hearing officer of this state or of its political subdivisions other than the Utah State Tax
1377 Commission, is \$50.

1378 (n) The fee for filing a judgment by confession without action under Section
1379 78B-5-205 is \$35.

1380 (o) The fee for filing an award of arbitration for confirmation, modification, or
1381 vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an
1382 action before the court is \$35.

1383 (p) The fee for filing a petition or counter-petition to modify a decree of divorce is
1384 \$100.

1385 (q) The fee for filing any accounting required by law is:

1386 (i) \$15 for an estate valued at \$50,000 or less;

1387 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

1388 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

1389 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

1390 (v) \$175 for an estate valued at more than \$168,000.

1391 (r) The fee for filing a demand for a civil jury is \$250.

1392 (s) The fee for filing a notice of deposition in this state concerning an action pending in
1393 another state under Utah Rule of Civil Procedure 26 is \$35.

1394 (t) The fee for filing documents that require judicial approval but are not part of an
1395 action before the court is \$35.

1396 (u) The fee for a petition to open a sealed record is \$35.

1397 (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
1398 addition to any fee for a complaint or petition.

1399 (w) (i) The fee for a petition for authorization for a minor to marry required by Section
1400 30-1-9 is \$5.

1401 (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6,
1402 Part 8, Emancipation, is \$50.

1403 (x) The fee for a certificate issued under Section 26-2-25 is \$8.

1404 (y) The fee for a certified copy of a document is \$4 per document plus 50 cents per
1405 page.

1406 (z) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
1407 per page.

1408 (aa) The Judicial Council shall by rule establish a schedule of fees for copies of
1409 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
1410 Government Records Access and Management Act. Fees under this Subsection (1)(aa) shall be
1411 credited to the court as a reimbursement of expenditures.

1412 (bb) There is no fee for services or the filing of documents not listed in this section or
1413 otherwise provided by law.

1414 (cc) Except as provided in this section, all fees collected under this section are paid to
1415 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
1416 accepts the pleading for filing or performs the requested service.

1417 (dd) The filing fees under this section may not be charged to the state, its agencies, or
1418 political subdivisions filing or defending any action. In judgments awarded in favor of the
1419 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
1420 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
1421 collected under this Subsection (1)(dd) shall be applied to the fees after credit to the judgment,
1422 order, fine, tax, lien, or other penalty and costs permitted by law.

1423 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
1424 shall transfer all revenues representing the difference between the fees in effect after May 2,
1425 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
1426 Facilities Construction and Management Capital Projects Fund.

1427 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
1428 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
1429 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
1430 initiate the development of a courts complex in Salt Lake City.

1431 (B) If the Legislature approves funding for construction of a courts complex in Salt
1432 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
1433 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
1434 (2)(a)(ii) to construct a courts complex in Salt Lake City.

1435 (C) After the courts complex is completed and all bills connected with its construction
1436 have been paid, the Division of Facilities Construction and Management shall use any monies
1437 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
1438 District Court building.

1439 (iii) The Division of Facilities Construction and Management may enter into
1440 agreements and make expenditures related to this project before the receipt of revenues
1441 provided for under this Subsection (2)(a)(iii).

1442 (iv) The Division of Facilities Construction and Management shall:

1443 (A) make those expenditures from unexpended and unencumbered building funds
1444 already appropriated to the Capital Projects Fund; and

1445 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
1446 under this Subsection (2).

1447 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
1448 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
1449 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
1450 account.

1451 (c) The Division of Finance shall deposit all revenues received from the court
1452 administrator into the restricted account created by this section.

1453 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall

1454 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
1455 Vehicles, in a court of record to the Division of Facilities Construction and Management
1456 Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be
1457 calculated on the balance of the fine or bail forfeiture paid.

1458 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
1459 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in
1460 a court of record to the Division of Finance for deposit in the restricted account created by this
1461 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the
1462 balance of the fine or bail forfeiture paid.

1463 (3) (a) There is created within the General Fund a restricted account known as the State
1464 Courts Complex Account.

1465 (b) The Legislature may appropriate monies from the restricted account to the
1466 administrator of the courts for the following purposes only:

1467 (i) to repay costs associated with the construction of the court complex that were
1468 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

1469 (ii) to cover operations and maintenance costs on the court complex.

1470 **Section 24. Repealer.**

1471 This bill repeals:

1472 **Section 77-18-10, Petition -- Expungement of records of arrest, investigation, and**
1473 **detention -- Eligibility conditions -- No filing fee.**

1474 **Section 77-18-11, Petition -- Expungement of conviction -- Certificate of eligibility**
1475 **-- Fee -- Notice -- Written evaluation -- Objections -- Hearing.**

1476 **Section 77-18-12, Grounds for denial of certificate of eligibility -- Effect of prior**
1477 **convictions.**

1478 **Section 77-18-13, Hearing -- Standard of proof -- Exception.**

Legislative Review Note
as of 11-18-09 5:17 PM

Office of Legislative Research and General Counsel

H.B. 21 - Expungement Revisions

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
